IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.MC.No. 3267 of 2007()

CC.740/1998 of JUDL. MAGISTRATE OF FIRST CLASS, PEERUMEDU

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PETITIONER: ACCUSED:

MATHEW, S/O.MATHAI AUGUSTY,
AGED 33 YEARS, MADIKKIYANKAL HOUSE,
CHAKKUPALLAM KARA, CHAKKUPALLAM VILLAGE,
IDUKKI.

BY ADV. SRI.VIVEK CHANDRAN
SRI.JADE KORASON

RESPONDENTS: COMPLAINANT:

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1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. K.S.KURIAN, KARAKKATTIL HOUSE,
CHELIMADA KARA, KUNMILY VILLAGE, IDUKKI DIST.

BY M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3267 of 2007

Dated this the 25th day of October, 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the Negotiable Instruments Act. The verdict of guilty, conviction and sentence has now become final with the order dated 21.02.2005 in Crl.R.P.No.100 of 2005 passed by another Bench of this Court. The petitioner has now paid the entire amount of compensation to the complainant and the complainant has accepted the same in full satisfaction. The petitioner appeared before the learned Magistrate and filed an application for composition. The learned Magistrate was not inclined to accept the same.

2. According to the petitioner, the learned Magistrate is proceeding to execute the default sentence. In these circumstances, the petitioner prays that the dictum in **Sabu George v. Home Secretary** [2007(1) K.L.T 982] may be invoked and the post revision composition may be accepted.

3. **Sabu George v. Home Secretary** [2007(1) K.L.T 982] is not authority for the proposition that any and every post revision composition can be accepted. In the peculiar facts and circumstances of the said case, taking note of the fact that in spite of the post

revision composition, the accused may be compelled to undergo a long period of substantive sentence in prison, this Court thought it fit to invoke the powers under Section 482 Cr.P.C to accept the composition and to set aside the substantive sentence of imprisonment. The facts in this case are entirely different. There is only a substantive sentence of imprisonment till rising of court. There is only a direction `to pay the amount of compensation'. The learned counsel for the petitioner asserts and the learned counsel for the respondent does not dispute the fact that the entire amount of compensation has been paid.

4. If the entire amount of compensation has been paid, there can be no question of execution of the default sentence. This position has been made clear in **Girish v. Muthoot Capital Service (P) Ltd.** [2007(1) KLT 16)]. I am, in these circumstances, satisfied that the composition need not be accepted. However, appropriate directions can be issued to the court below.

5. This Crl.M.C is, in these circumstances, allowed in part. The following directions are issued:

i) The petitioner shall appear before the learned Magistrate on any working day at 11 a.m. If the petitioner so appears, he shall be permitted to undergo the default sentence of imprisonment till rising of court, if he has not so far undergone that sentence;

ii) The petitioner and the complainant can file an appropriate application before the learned Magistrate to confirm that the entire compensation amount has been paid and discharged. If the learned Magistrate is satisfied of that fact, the learned Magistrate shall not proceed to execute the default sentence.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-